

STATEMENT OF THE CASE

David Bezy brings this interlocutory appeal from the trial court's denial of his motion to discharge under Criminal Rule 4(B)(1). Bezy raises a single issue for our review, namely, whether the court violated his right to a speedy trial and thereby erred in not granting his motion to discharge.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 10, 2006, the State arrested Bezy on a preliminary charge of Arson. On April 11, Bezy filed a motion for a speedy trial pursuant to Criminal Rule 4(B), and the trial court scheduled Bezy's jury trial for June 12. On April 12, the State charged Bezy with arson, as a Class B felony; Burglary, as a Class B felony; Theft, as a Class D felony; Resisting Law Enforcement, as a Class A misdemeanor; and two counts of Operating a Vehicle While Intoxicated, one as a Class D felony and one as a Class C misdemeanor.

On April 20, Bezy filed a motion to dismiss or, in the alternative, to compel an amended information. The court held a hearing on Bezy's motion on May 25 and granted that motion in part. The court gave the State twenty days to amend two of the original counts. On June 8, the State filed a motion to continue Bezy's trial to June 19, sixty-nine days after his motion for a speedy trial, in order to prepare for trial and to reinvestigate the two counts that were being amended. The court granted the State's motion and rescheduled Bezy's trial for June 19. On June 13, the State filed an amended charging information.

On June 15, the trial court made a sua sponte motion to continue Bezy's trial to August 14 due to congestion of the court's calendar. Bezy filed an objection to the court's finding of congestion on June 16 and filed a motion for discharge on June 22. The court held a hearing on Bezy's motion on July 7, and on August 21 the court issued an order denying that motion. The court's order stated the facts as, in relevant part:

8) The Chronological Case Summary notes that on June 16, 2006:

* * *

B) Having considered the State's Motion to Amend the Information and the Defendant's objection thereto and the arguments of counsel, the Court:

* * *

2) The Court [sic] ruled the delay is attributable to the Defendant by virtue of the Defendant filing the Motion to Dismiss on April 21, 2006 . . . which precluded the State from complying with I.C. 35-34-1-5(b).

* * *

12) The rescheduled trial date of June 19, 2006 falls within seventy (70) days of the Defendants Demand for Speedy Trial filed on April 11, 2006.

13) The State of Indiana filed its Amended Information within the twenty (20) days [sic] deadline set forth by the Court on May 25, 2006.

14) The Court continued the trial date scheduled for June 19, 2006 at 8:30 [a.m.] due to congestion with priority being given to State v. William Rama: 22D01-0411-FC-790 and 22D01-0503-FD-162.

* * *

16) The Court held that State v. William Rama: enjoyed priority due to the fact that the Defendant [Rama] had been incarcerated since April 10, 2005, a period of fourteen (14) months.

17) On June 19, 2006, the Jury panel was present at the Court for the trial of State v. William Rama [on both causes], however, Mr. Rama entered a blind plea of guilty in the presence of the jury panel.

Appellant's App. at 116-17. The court then made the following conclusions:

3) Court congestion due to State v. William Rama justified a reasonable delay of State v. David Bezy beyond the seventy day period.

4) [Criminal Rule] 4 allows the Court to note trial docket congestion and continue the case beyond the deadlines [required by the Rule] sua sponte
....

5) . . . the Court took note of congestion on its own motion.

* * *

7) Pursuant to the Courts [sic] discretion to make the factual determination of congestion, the Court determined that the Court was congested due to William Rama v. State[, which was pending under two different cause numbers].

* * *

11) At the time the Court made the finding of congestion, the Court was unaware [that] on the morning of June 19, 2006, Mr. Rama would agree to enter a blind plea with the Court, and would do so thereby waiving his right to a jury trial.

12) The Court's finding of congestion was factually and legally accurate at the time the Court made the finding on June 16, 2006.

* * *

15) The Court ordered the continuance due to congestion on June 16, 2006, a period of 67 days from April 11, 2005, the date on which the Defendant filed his motion for speedy trial.

16) A 71[-]day period of continuance due to court congestion is a reasonable delay when another criminal case is set for trial on the same date. Foster v. State, 795 N.E.2d 1078 (Ind. Ct. App. 2003).

17) In the instant case, the Court continued the Defendant's trial for a period of 59 days, which was not an unreasonable delay.

Id. at 117-18. The court certified its order for interlocutory appeal, which we accepted.

DISCUSSION AND DECISION

The right of an accused to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and by Article I, Section 12 of the Indiana Constitution. Clark v. State, 659 N.E.2d 548, 551 (Ind. 1995). This “fundamental principle of constitutional law” has long been zealously guarded by our courts. Id. (quoting Castle v. State, 237 Ind. 83, 143 N.E.2d 570, 572 (1957)). To this end, the provisions of Indiana Criminal Rule 4 implement the defendant’s speedy trial right. Id. Specifically, Criminal Rule 4(B)(1) provides, in relevant part, that a defendant:

shall be discharged if not brought to trial within seventy (70) calendar days from the date of [his speedy trial motion], except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar.

A defendant must maintain a position reasonably consistent with his request for a speedy trial, and he must object—at the earliest opportunity—to a trial setting that is beyond the seventy-day time period. Hill v. State, 777 N.E.2d 795, 798 (Ind. Ct. App. 2002), trans. denied. The Rule explicitly provides that court congestion is an exception to the seventy-day time period. Ind. Crim. R. 4(B)(1); Paul v. State, 799 N.E.2d 1194, 1197 (Ind. Ct. App. 2003). A trial court’s finding of congestion is presumed to be valid. Logan v. State, 836 N.E.2d 467, 474 (Ind. Ct. App. 2005), trans. denied. A defendant may challenge the trial court’s finding of congestion but he must demonstrate that the finding was factually or legally inaccurate. Collins v. State, 730 N.E.2d 181, 183 (Ind. Ct. App. 2000). It is the defendant’s burden to present sufficient evidence that the

finding of congestion was clearly erroneous. Bridwell v. State, 659 N.E.2d 552, 554 (Ind. 1995).

In reviewing a trial court's denial of a motion to discharge pursuant to Criminal Rule 4(B), we apply a clearly erroneous standard. Paul, 799 N.E.2d at 1197. We will not reverse the trial court's decision unless the defendant has made a showing of clear error that leaves us with a firm conviction that a mistake was made. Id.

Here, Bezy contends that the trial court's denial of his motion to discharge is clearly erroneous because State v. Rama, for which Bezy's trial was rescheduled, was not entitled to priority over Bezy's case. Bezy also maintains that the trial court's decision was clearly erroneous because, if Rama's case was entitled to priority, the court failed to provide Bezy with a "meaningful trial date" by scheduling his trial on the same day as Rama's trial. Notably, Bezy does not challenge either that Rama's case was scheduled for June 19, 2006, or that Rama had been incarcerated for fourteen months before that scheduled trial date.

Bezy first argues that the trial court's finding of congestion was clearly erroneous because he was entitled to priority over Rama, who had not filed a speedy trial request pursuant to Criminal Rule 4. In support, Bezy cites our supreme court's decision in Clark v. State, 659 N.E.2d 548, 551 (Ind. 1995), in which the court held that "[u]pon an incarcerated defendant's request for speedy trial, Criminal Rule 4(B) requires particularized priority treatment." Our supreme court also stated:

We recognize, however, that emergencies in either criminal or civil matters may occasionally interfere with this scheme. Similarly, there may be major, complex trials that have long been scheduled or that pose significant extenuating circumstances to litigants and witnesses, which will, on rare

occasions, justify application of the court congestion or exigent circumstances exceptions.

Id. at 551-52.

In McKay v. State, 714 N.E.2d 1182, 1188 (Ind. Ct. App. 1999), we generally rejected arguments such as Bezy's, stating:

The court . . . indicated to [Defendant] McKay that it was aware of his request for a speedy trial, but [it] could only try one case at a time, and because State v. Smith & Braeziel[, in which no speedy-trial request had been made,] had been on the calendar, it would be tried first.

Next, McKay argues that State v. Smith & Braeziel was not a Crim. R. 4 priority case and therefore, his case should have been the "first choice." In essence, he urges this court to adopt a bright-line rule that all Crim. R. 4 cases must be tried before any other case that is not a Crim. R. 4 priority. We decline to accept this proposal. . . .

Nevertheless, assessing the cause of delay involves a factual determination appropriately to be determined by the trial court. Here, the trial court made a factual determination that the court was congested due to the case of State v. Smith & Braeziel. The reasonableness of any delay must be judged in the context of the particular circumstances of the case, and absent an abuse of discretion, the trial court's decision will not be disturbed. McKay presented testimony that this was not a Crim. R. 4 priority case; nevertheless, this alone is insufficient to establish that the court's finding of congestion was clearly erroneous.

(Footnote and citations omitted.) Thus, evidence that a prioritized case is not a Criminal Rule 4 case alone is insufficient to establish error. Id.

In his Reply Brief, Bezy attempts to distinguish McKay by arguing that Rama's case did not involve "any emergency or special circumstances," Reply at 4, and therefore Bezy has shown more than the mere fact that Rama's case was not a Criminal Rule 4 priority case. But the non-Criminal Rule 4 case in McKay also did not involve an emergency or special circumstance; hence, it is not clear how that fact distinguishes

McKay from the facts of Bezy's case. Nonetheless, Bezy ignores the trial court's finding that Rama had been incarcerated for fourteen months before his scheduled trial date. We therefore cannot say that the trial court's finding that Rama's case was entitled to priority is clearly erroneous.

Bezy next contends that the trial court denied him a "meaningful trial date" by scheduling his trial on the same day as Rama's trial. See Clark, 659 N.E.2d at 551 ("[the requesting defendant] must be assigned a meaningful trial date within the time prescribed by the rule."). But Bezy presents no evidence demonstrating that the trial court had a date available for his speedy trial before the June 19, 2006, date used by the court. And, again, the court did not clearly err in prioritizing Rama's case over Bezy's. Further, in his Reply Brief Bezy "concedes that when re-setting [his] trial, the court could have set it on a date outside of seventy days upon a proper determination that congestion prevented an earlier setting." Reply at 5. See Gillie v. State, 465 N.E.2d 1380, 1386 (Ind. 1984). As such, we cannot say that the trial court denied Bezy a meaningful trial date. Because we hold that the trial court did not err in delaying Bezy's trial due to congestion, we do not address whether the court erred when it attributed delay to Bezy for filing his motion to dismiss.

Affirmed.

RILEY, J., and BARNES, J., concur.